

TITLE 41
INSURANCE

CHAPTER 29
RECIPROCAL INSURERS

41-2901. "RECIPROCAL" INSURANCE DEFINED. "Reciprocal" insurance is that resulting from an interexchange among persons, known as "subscribers", of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney in fact" common to all such persons.

[41-2901, added 1961, ch. 330, sec. 628, p. 645.]

41-2902. "RECIPROCAL INSURER" DEFINED. A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney in fact to provide reciprocal insurance among themselves. When all participants in a reciprocal insurer are political subdivisions of the state of Idaho, such interexchange may be accomplished by a joint exercise of powers agreement pursuant to [chapter 23, title 67](#), Idaho Code.

[41-2902, added 1961, ch. 330, sec. 629, p. 645; am. 1996, ch. 245, sec. 2, p. 777.]

41-2903. SCOPE OF CHAPTER -- EXISTING INSURERS. (1) All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals. Political subdivisions of the state of Idaho participating in a reciprocal insurance program shall retain all rights, obligations, and immunities which inure to their respective benefit or duty, without compromise or modification, as otherwise provided by law.

(2) Every reciprocal insurer in its own name as in the case of an individual may purchase, receive, own, hold, lease, mortgage, pledge or encumber, and may by deed of trust or otherwise, manage and sell real estate for the purposes and objects of the reciprocal including, but not limited to, investment for the production of income, or for its accommodation in the convenient transaction of its business. Any contract including, but not limited to, deeds, leases, mortgages, deeds of trust, purchase of sale agreements or any other contract to be executed in the name of the reciprocal insurer, may be executed by the attorney designated by the subscribers of the reciprocal insurer.

(3) Existing authorized reciprocal insurers shall after the effective date of this code comply with the provisions of this chapter, and shall make such amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required for such compliance.

[41-2903, added 1961, ch. 330, sec. 630, p. 645; am. 1992, ch. 76, sec. 1, p. 214; am. 1996, ch. 245, sec. 3, p. 777.]

41-2904. INSURING POWERS OF RECIPROCALS. (1) A reciprocal insurer may, upon qualifying therefor as provided for by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) Such an insurer may purchase reinsurance, and may grant reinsurance as to any kind of insurance it is authorized to transact direct.

[41-2904, added 1961, ch. 330, sec. 631, p. 645.]

41-2905. NAME -- SUITS. A reciprocal insurer shall: (1) Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting."

(2) Sue and be sued in its own name.

[41-2905, added 1961, ch. 330, sec. 632, p. 645.]

41-2906. SURPLUS FUNDS REQUIRED. (1) A domestic reciprocal insurer is governed, as to surplus required to be maintained, by section [41-313](#) or [41-313A](#), Idaho Code.

(2) A domestic reciprocal insurer may be authorized to transact additional kinds of insurance if it has otherwise complied with the provisions of this code therefor and possesses and maintains surplus funds as to such additional kinds of insurance as provided in section [41-313](#), Idaho Code.

(3) A domestic reciprocal insurer holding a valid certificate of authority to transact insurance in this state immediately prior to January 1, 1995, shall have a period of two (2) years from and after January 1, 1995, within which to comply with any increase in surplus requirements.

[41-2906, added 1961, ch. 330, sec. 633, p. 645; am. 1969, ch. 214, sec. 69, p. 625; am. 1979, ch. 318, sec. 2, p. 855; am. 1995, ch. 96, sec. 5, p. 276.]

41-2907. ATTORNEY. (1) "Attorney," as used in this chapter, refers to the attorney in fact of a reciprocal insurer. The attorney may be an individual, firm, joint powers entity, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign firms or corporations.

[41-2907, added 1961, ch. 330, sec. 634, p. 645; am. 1996, ch. 245, sec. 4, p. 777.]

41-2908. ORGANIZATION OF RECIPROCAL INSURER. (1) Twenty-five (25) or more persons domiciled in this state, or employers in this state having aggregate payrolls of not less than one and one-half million dollars (\$1,500,000) and proposing to transact worker's compensation insurance only, may organize a domestic reciprocal insurer and make application to the director for a certificate of authority to transact insurance. A subscriber that is a corporation, limited liability company or other legal entity recognized by the state of Idaho as a separate entity, shall be considered as one (1) subscriber, regardless of the number of its wholly owned subsidiaries.

(2) The proposed attorney shall fulfill the requirements of and shall execute and file with the director when applying for a certificate of authority, a declaration setting forth:

- (a) The name of the insurer;
- (b) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;
- (c) The kinds of insurance proposed to be transacted;
- (d) The names and addresses of the original subscribers;
- (e) The designation and appointment of the proposed attorney and a copy of the power of attorney;
- (f) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;
- (g) The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;
- (h) That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- (i) A copy of the subscribers' agreement;
- (j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six (6) months at an adequate rate theretofore filed with and approved by the director;
- (k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required in section [41-313](#) or [41-313A](#), Idaho Code, is on hand; and
- (l) A copy of each policy, endorsement and application form it then proposes to issue or use.

Such declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

[41-2908, added 1961, ch. 330, sec. 635, p. 645; am. 1995, ch. 96, sec. 6, p. 277; am. 2006, ch. 199, sec. 1, p. 615.]

41-2909. CERTIFICATE OF AUTHORITY. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The director may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any provision of this code.

[41-2909, added 1961, ch. 330, sec. 636, p. 645.]

41-2910. POWER OF ATTORNEY OR JOINT POWERS ENTITY. (1) The rights and powers of the attorney or designated joint powers entity of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

- (a) The powers of the attorney;
- (b) That the attorney is empowered to accept service of process on behalf of the insurer and to authorize the director to receive service of process in actions against the insurer upon contracts exchanged;
- (c) The general services to be performed by the attorney or joint powers entity;

(d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and

(e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy.

(3) The power of attorney or joint exercise of powers agreement may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) Contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this state until approved by the director.

[41-2910, added 1961, ch. 330, sec. 637, p. 645; am. 1996, ch. 245, sec. 5, p. 778.]

41-2911. MODIFICATIONS. Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto.

[41-2911, added 1961, ch. 330, sec. 638, p. 645.]

41-2912. ATTORNEY'S BOND. (1) Concurrently with the filing of the declaration provided for in section [41-2908](#), the attorney of a domestic reciprocal insurer shall file with the director a bond in favor of the state of Idaho for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection (2) hereof. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the director's approval.

(2) The bond shall be in the penal sum of twenty-five thousand dollars (\$25,000), aggregate in form, conditioned that the attorney will faithfully account for all monies and other property of the insurer coming into his hands, and that he will not withdraw or appropriate to his own use from the funds of the insurer, any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless thirty (30) days' advance notice in writing of cancellation is given both the attorney and the director.

[41-2912, added 1961, ch. 330, sec. 639, p. 645.]

41-2913. DEPOSIT IN LIEU OF BOND. In lieu of the bond required under section [41-2912](#), the attorney may maintain on deposit through the office of the director, a like amount in cash or in value of securities eligible for deposit under section [41-803](#) of this code and subject to the same conditions as the bond.

[41-2913, added 1961, ch. 330, sec. 640, p. 645.]

41-2914. ACTION ON BOND. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

[41-2914, added 1961, ch. 330, sec. 641, p. 645.]

41-2915. SERVICE OF PROCESS -- JUDGMENT. (1) Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices or by serving the director as the insurer's process agent under sections [41-333](#) and [41-334](#).

(2) Any judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear, but in an amount not exceeding their respective contingent liabilities, if any, the same as though personal service of process was had upon each such subscriber. When all participants in a reciprocal insurer are political subdivisions of the state of Idaho, no contingent liability shall attach to individual subscribers by virtue of such participation.

[41-2915, added 1961, ch. 330, sec. 642, p. 645; am. 1996, ch. 245, sec. 6, p. 778.]

41-2916. CONTRIBUTIONS TO INSURER. The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the director. This section does not apply to bank loans, or to other loans made upon security.

[41-2916, added 1961, ch. 330, sec. 643, p. 645.]

41-2917. ANNUAL STATEMENT. (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney or the administrator of a joint powers entity.

(2) The statement shall be supplemented by such information as may be required by the director relative to the affairs and transactions of the attorney or joint powers entity insofar as they relate to the reciprocal insurer.

[41-2917, added 1961, ch. 330, sec. 644, p. 645; am. 1996, ch. 245, sec. 7, p. 779.]

41-2918. FINANCIAL CONDITION -- METHOD OF DETERMINING. In determining the financial condition of a reciprocal insurer the director shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for ninety (90) days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than ninety (90) days shall be allowed as assets.

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

[41-2918, added 1961, ch. 330, sec. 645, p. 645; am. 1979, ch. 318, sec. 3, p. 855; am. 1995, ch. 96, sec. 7, p. 278; am. 2005, ch. 72, sec. 1, p. 248.]

41-2919. WHO MAY BE SUBSCRIBERS. (1) Individuals, partnerships, associations and corporations, public or private, of this state, hereby designated as subscribers, are authorized to exchange reciprocal or interinsurance contracts with each other, or with individuals, partnerships, associations and corporations, public or private, of other states and countries, providing indemnity among themselves for any loss which may be insured against by the reciprocal insurer to which they are subscribers; except, that public corporations of this state may so insure only in an insurer which has a surplus of three hundred thousand dollars (\$300,000) or more and under an insurance contract as to which such an insured has no contingent liability.

(2) Any corporation now or hereafter organized under the laws of this state shall, in addition to the rights, powers and franchises specified in its articles of incorporation have full power and authority to exchange insurance contracts of the kind and character mentioned in subsection (1) above. The right to exchange such contracts is declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred.

(3) Governmental entities of this state as defined by section [6-902](#), Idaho Code, may insure with a domestic reciprocal insurer authorized to do business in this state as a reciprocal insurer so long as said governmental entity insurer has complied with the applicable provisions of this title.

(4) Any officer, representative, trustee, receiver, or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon the contract by reason of acting in such representative capacity.

[41-2919, added 1961, ch. 330, sec. 646, p. 645; am. 1979, ch. 318, sec. 4, p. 856.]

41-2920. SUBSCRIBERS' ADVISORY COMMITTEE. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than two-thirds (2/3) of such committee shall be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

- (a) Supervise the finances of the insurer;
- (b) Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;
- (c) Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and
- (d) Have such additional powers and functions as may be conferred by the subscribers' agreement.

[41-2920, added 1961, ch. 330, sec. 647, p. 645.]

41-2921. SUBSCRIBERS' LIABILITY. (1) The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several and proportionate liability, and not joint. When all participants in a reciprocal insurer are political subdivisions of the state of Idaho, no liability shall attach to individual subscribers which is not consistent with constitutional or statutory limitations thereon.

(2) Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in section [41-2925](#) of this chapter.

(3) Each assessable policy issued by the insurer shall contain a statement of the contingent liability, set in type of the same prominence as the insuring clause.

[41-2921, added 1961, ch. 330, sec. 648, p. 645; am. 1996, ch. 245, sec. 8, p. 779.]

41-2922. SUBSCRIBERS' LIABILITY ON JUDGMENT. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty (30) days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

[41-2922, added 1961, ch. 330, sec. 649, p. 645.]

41-2923. ASSESSMENTS. (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the director; or by the director in liquidation of the insurer.

(2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as computed in accordance with section [41-2925](#) of this chapter, shall be com-

puted by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable.

[41-2923, added 1961, ch. 330, sec. 650, p. 645.]

41-2924. TIME LIMIT FOR ASSESSMENT. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his policy is in force or within one year after its termination, he is notified by either the attorney or the director of his intentions to levy such assessment, or

(2) If an order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while his policy is in force or within one year after its termination.

[41-2924, added 1961, ch. 330, sec. 651, p. 645.]

41-2925. AGGREGATE LIABILITY. No one policy or subscriber as to such policy, shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

[41-2925, added 1961, ch. 330, sec. 652, p. 645.]

41-2926. NONASSESSABLE POLICIES. (1) Nongovernmental entities. If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the total surplus required in section [41-313](#), Idaho Code, as to such insurer, upon application of the attorney and as approved by the subscribers' advisory committee the director shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the director shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

(3) The director shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish

such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

[41-2926, added 1961, ch. 330, sec. 653, p. 645; am. 1979, ch. 318, sec. 5, p. 857; am. 1995, ch. 96, sec. 8, p. 279; am. 2005, ch. 72, sec. 2, p. 249.]

41-2927. DISTRIBUTION OF SAVINGS. A reciprocal insurer may from time to time return to its subscribers any unused premiums, savings or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers, but this shall not prevent retrospective rating, nor distribution on a retrospective plan.

[41-2927, added 1961, ch. 330, sec. 654, p. 645.]

41-2928. SUBSCRIBERS' SHARE IN ASSETS. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus made as provided in section [41-2916](#) of this chapter, and the return of any unused premium, savings, or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the twelve (12) months prior to the last termination of its certificate of authority, according to such reasonable formula as the director may approve.

[41-2928, added 1961, ch. 330, sec. 655, p. 645.]

41-2929. MERGER OR CONVERSION. (1) A domestic reciprocal insurer upon affirmative vote of not less than two-thirds (2/3) of its subscribers who vote on such merger pursuant to due notice and the approval of the director of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The director shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with section [41-2928](#) and a reasonable length of time within which to exercise such right.

[41-2929, added 1961, ch. 330, sec. 656, p. 645.]

41-2930. IMPAIRED RECIPROCALLS. (1) If the assets of a reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the

deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.

(2) If the attorney fails to make up such deficiency or to make the assessment within thirty (30) days after the director orders him to do so, or if the deficiency is not fully made up within sixty (60) days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the director determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

[41-2930, added 1961, ch. 330, sec. 657, p. 645.]